IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

WP(C).No. 16425 of 2006(E)

PETITIONER:

ARFATH BEGUM, D/O.LATE ABDUL JABHAR,
FAIZAL MANZIL, KACHERIMED, CHITTOOR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

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1. SRI.M.I.SHAJI, SUB INSPECTOR OF POLICE,
CHITTOOR POLICE STATION, CHITTOOR ,
PALAKKAD DISTRICT.

2. THE DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. THE SUPERINTENDENT OF POLICE,
PALAKKAD.

BY GOVERNMENT PLEADER SRI.K.A.AKBAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.16425 of 2006

Dated this the 3rd day of January, 2007

JUDGMENT

The petitioner is the defacto complainant in Crime No.210 of 2006 of Chittoor Police Station. She had raised allegations against 5 accused persons, of which the 1st accused is her husband. Accused 2 to 5 are relatives of her husband. She had in fact raised the allegations in a private complaint filed by her before the learned Judicial First Class of the Magistrate, Chittur. That was referred to the police by the learned Magistrate. After investigation, the police had submitted a final report. In the final report, the police had reported that no offence is revealed against accused 2 to 5. Allegations were raised against the 1st accused under Section 498 A I.P.C. The learned Magistrate took cognizance of the offence alleged against the 1st accused and registered a case against the 1st accused only.

2. The short grievance raised by the petitioner in this case is that she is entitled to be heard before such a negative final report in so far as it relates to accused 2 to 5 arrayed by her in the complaint is accepted. Acceptance of the final report

without and before giving notice to her to raise her objections amounts to negation of her rights to seek justice from the Court. The course adopted by the learned Magistrate is opposed to the principles laid down by superior Courts in various binding precedents. This in short is the contention raised.

3. Report of the learned Magistrate was called for. In the report dated 07.12.2006, the learned Magistrate has accepted the fact that the charge sheet, arraying only the 1st accused as an accused and without raising any charges against accused 2 to 5, was accepted without giving notice to the petitioner herein.

4. The said course followed by the learned Magistrate is certainly opposed to the principles laid down in **Bhagwant Singh v. Commissioner of Police** [(1985) 2 SCC 537], **Union Public Service Commission v. S.Papaiah and others** [(1997) 7 SCC 614 and **G.Rajesh v. Officer in Charge, Aluva Police Station** [2005 (2) KLD (Cri) 475]. It is now trite that when a negative final report is received by the learned Magistrate, notice must be given to the person at whose instance the proceedings are commenced so that he can raise objections, if any, against the acceptance of such negative final report. This principle is equally applicable when few of the many accused

against whom allegations are raised are allowed to go scot-free without any charge being filed against them. In respect of such partial rejection of her case also, the petitioner is entitled to raise objections.

5. The report of the learned Magistrate shows that much earlier, the Investigating Officer had filed a report to inform the court that accused 2 to 5 are being dropped from the array of parties. The mere fact that such an earlier report had been filed and the final report filed is only a continuation of such earlier report cannot also lead to the conclusion that the defacto complainant is not entitled to raise her objections as held in the decisions earlier referred to. Even when such intimation has been given to the court earlier by the Investigating Officer before acceptance of the final report, the defacto complainant is entitled to be heard when the court chooses not to proceed against some of the accused, against whom the complainant had made allegations, on the basis of the negative report submitted by the Investigating Officer.

6. It follows from the above discussions that acceptance of the final report by the learned Magistrate without giving the petitioner an opportunity to be heard is not proper and justified and the same deserves to be interfered with.

7. In the result, this Writ Petition is, allowed. The acceptance of the final report submitted by the Investigating Officer in Crime No.210 of 2006 of Chittur Police Station by the learned Magistrate is set aside. The learned Magistrate is directed to consider the said final report afresh after giving the petitioner an opportunity to raise her objections and to be heard in the matter. In the interests of expedition, I direct that the petitioner shall appear before the learned Magistrate on 12.02.2007 and raise her objections against the final report. Communicate a copy of this order to the learned Magistrate forthwith.

(R.BASANT, JUDGE)

rtr/-